

06/18/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Edward J. Cheal *et al.*

Docket No.: OLK-002.01

Application No.: 10/595,291

Confirmation No.: 6942

Filing or 371(c) Date: April 5, 2006

Art Unit: 3711

For: TAPERED JOINT PROSTHESIS

Examiner: A. M. Schillinger

**RESPONSE AFTER FINAL ACTION**

To the Commissioner for Patents:

Claims 1, 2, and 11-16 were rejected for nonstatutory obviousness-type double patenting over claims 11, 12, and 14-16 of U.S. Pat. No. 7,044,975 in view of U.S. Pat. No. 5,047,060 to Henssge et al. Applicant disagrees with the Examiner's position and considers the pending claims to be patentably distinct from the claims of the '975 patent. Nevertheless, Applicant files a terminal disclaimer with this response to obviate the rejection and expedite prosecution. Applicant's choice of this expedient should in no way be construed as an acquiescence to the rejection of these claims or an admission that the claims are not patentably distinct from the claims of the prior patent. See *Quad Environmental Technologies Corp. v. Union Sanitary Dist.*, 946 F.2d 870, 874 (Fed.Cir., 1991) ("In legal principle, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection"). Please reconsider and withdraw the rejection.

Respectfully submitted,  
FOLEY HOAG LLP

Date: June 2, 2009  
**Customer No: 25181**  
Patent Group, Foley Hoag LLP  
155 Seaport Blvd.  
Boston, MA 02210-2600

/SCOTT E. KAMHOLZ/  
Scott E. Kamholz, Reg. No. 48,543  
Attorney for Applicant  
Tel. No. (617) 832-1176  
Fax. No. (617) 832-7000